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S.B. CIVIL WRIT PETITION NO.7563/2007.
Anand Raj Mathur
Vs.
The State of Rajasthan & Ors.

Date of Order :: 20th November 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Pankaj Gupta, for the petitioner.

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BY THE COURT:

By way of this writ petition, the petitioner seeks the relief of directions to the respondents not to disturb his possession over the Government accommodation of House No. JJ/146-G13, Ahore Colony, Jalore until 31.12.2007. During the course of submissions, an alternative prayer has also been made that the petitioner may be permitted to retain the said accommodation until the respondents take a decision on his representation dated 12.11.2007 (Annex.9).

From the factual matrix presented by the petitioner, it appears that attaining the age of superannuation, he retired on 30.06.2007 from the post of Office Assistant in the office of the Executive Engineer, Public Works Department (City), Jalore. The petitioner, however, continued to retain possession over the aforesaid Government accommodation that was allotted to him in the course of his employment in the year 1986. According to the petitioner, he was unable to vacate the house

in question due to compelling circumstances and, therefore, moved a representation on 20.08.2007 (Annex.1). It is noticed that by way of the said representation, the petitioner suggested that he had commenced the work of construction of his house at Jodhpur in the month of July 2007 and made a request for permitting him to retain possession of the aforesaid Government accommodation until the month of December 2007. It appears that the said accommodation has since been allotted to the respondent No.4 under an order issued by the Collector, Jalore on 17.09.2007 (Annex.2). The petitioner was informed by the Collector under the communication dated 26.09.2007 (Annex.3) that he could have remained in possession of the Government accommodation for two months from the date of retirement on normal rent and could be permitted to retain the possession for another two months with payment of market rate after prior permission of the State Government. The Collector pointed out that the petitioner had not asked for retaining the house beyond two months from the date of retirement within time; that however, his application had been sent to the General Administration Department for permitting him to remain in possession on payment of market rate of rent but no any permission was received from the Government and hence, he ought to vacate the house. It seems that the petitioner was reminded to vacate the house in

question by the Executive Engineer also by way of a communcation dated 25.09.2007 (Annex.4). The petitioner, however, continued to occupy the house in question; and it appears that the Government in its General Administration department, by a communication dated 18.07.2007 (Annex.6) permitted the petitioner to retain possession of the house in question on payment of normal rent from 01.07.2007 to 31.08.2007 and of market rent from 01.09.2007 to 31.10.2007.

The petitioner having yet not vacated the house, has been served with a notice by the Collector, Jalore on 06.11.2007 (Annex.8) informing that the time extended to him to retain possession of the house has since expired and he ought to vacate the house within seven days of the receipt of the letter, else would be forced to do so.

The petitioner has allegedly made a representation dated 12.11.2007 (Annex.9) enclosing a certificate regarding ailment of his wife and stated that they could not make arrangement of packaging and, therefore, permission to retain possession may be extended, as prayed earlier, until the month of December 2007; and has thereafter filed this writ petition on 16.11.2007.

It has been strenuously contended by the learned counsel for the petitioner that the respondents for their adamancy want to get the house vacated from the petitioner

though he only seeks to remain in possession until December 2007 due to compelling circumstances stated by him in his representation; that some of the persons are in possession of the Government accommodations beyond the term permissible inasmuch as some of the persons retained possession beyond six months of their transfer orders and one Peon was in possession of the Government accommodation even after one year of his retirement but unnecessarily the petitioner is being insisted upon to vacate. Learned counsel further submitted that in any event, the petitioner's case could have been considered sympathetically particularly for the ailment of his wife and, without causing any loss to anybody, the petitioner could have been permitted to retain the house until the month of December 2007. Learned counsel has referred to and relied upon a decision of this Court in the case of Arvind Kumar Sharma Vs. State of Rajasthan : 1992 (2) WLC 242. Learned counsel made a prayer in the alternative that the petitioner may be permitted to retain the house in question at least till the time a decision is taken on his representation (Annex.12). Learned counsel has also referred to Rule 20 (4) of the Rajasthan Civil Services (Determination and Recovery of Rent of Accommodation) Rules, 1958 ('the Rules of 1958').

Having given a thoughtful consideration to the submissions made by the learned counsel for the petitioner and having perused the material placed on record, this Court is clearly of opinion that the petitioner is not entitled for any relief in extra ordinary writ jurisdiction and this petition does not merit admission.

No Rule has been shown in reference whereof the petitioner, who has retired from service on 30.06.2007, is entitled to retain possession of the Government accommodation beyond the period stated by the respondents, i.e., two months on normal rent and for two further months, upon approval by the Government, on market rent. It appears that the petitioner in the first place never bothered about seeking any permission to retain possession of the house beyond the period of two months but then, made a request on 20.08.2007 with the submissions that he had started house construction in the month of July 2007 at Jodhpur and, therefore, might be permitted to retain possession until the month of December 2007. Though the petitioner was called upon to vacate the house by the communication dated 26.09.2007 (Annex.3) for no permission having been received from the Government but then, he was not forced out; and it appears that the Government had permitted retaining of the house until 31.10.2007 under the communication dated

18.10.2007 (Annex.6). It was only after expiry of such extended period that the respondents asked the petitioner to vacate by the impugned communication dated 06.11.2007 and yet afforded him seven days' time to do so. This petition is being considered 14 days from the communication dated 06.11.2007 and there appears no reason or justification wherefor the petitioner be permitted to retain the house in question any further.

The submissions as made by the petitioner with reference to the ailment of his wife do not inspire confidence fundamentally for the reason that such assertion is made with reference to a certificate issued by a private hospital only on 02.11.2007 and, though stating the ailment of his wife since 22.09.2007, the petitioner does not seem to have apprised the Department at the relevant time of any such difficulty faced by him. It is noticed that the petitioner did address a communication to the Executive Engineer of the Public Works Department, Jalore on 28.09.2007 (Annex.5) referring only to the fact that the matter was pending for sanction with the State Government; but did not state anything about ailment of his wife. In the overall circumstances of the case, such certificate, in relation to the treatment of his wife as an outdoor patient at Jodhpur, does not provide a reasonable ground for sympathetic consideration for the purpose of the petitioner

retaining the Government accommodation at Jalore.

On the facts and in the circumstances of the case, this Court is clearly of opinion that the petitioner ought to have respected the rule of law; and ought to have vacated the house within the time already provided to him by the Government on all sympathetic considerations.

Alleged illegal retention of any other accommodation by any other person does not invest the petitioner with any right to remain in possession of the accommodation beyond the Rules. Such a claim by the petitioner is nothing but seeking parity with an illegality allegedly committed by any other person; and cannot be countenanced.

The decision in the case of Arvind Kumar Sharma (supra) was rendered in an entirely different fact situation. The said petitioner was living in an F type accommodation with his father who sought voluntary retirement in the month of July 1986; and the petitioner could have retained possession of the said accommodation until the month of December 1986. The petitioner himself being a Government servant was asked to shift to the accommodation allotted to him. However, the petitioner pointed out that he was unable to accommodate himself and his family of 8 members in the newly allotted quarter having only one bedroom; and requested for allotment of G type accommodation which he was entitled to. In such a

fact situation and on humanitarian grounds, the respondents were directed to allot the petitioner a G type accommodation taking his priority since December 1986. The said case has hardly any application or relevance to the facts of the present case.

Learned counsel has referred to Sub-rule (4) of Rule 20 of the Rules of 1958. The said provision operates rather against the propositions stated by the petitioner. The said provision reads thus:

> "(4) यदि कोई राजकीय कर्मचारी सरकारी मकान अथवा सरकार द्वारा लीज के लिए मकान का उपयोग करना ऊपर उल्लेखित किए गए प्रावधानों के उल्लंघन में जारी रखता है, तो उसे अनाधिकृत कब्जा रखने वाला समझा जायेगा और मकान का दुगुना प्रामाणिक किराया देने का देनदार होने के अतिरिक्त निम्नलिखित कार्यों के लिए सरकार उसके विरूद्ध और भी कार्यवाही कर सकेगी -
>
> (क) मकान खाली कराने के लिए, तथा
> (ख) सरकारी आज्ञाओं का उल्लंघन करने के लिए ।

Therefore, upon retaining possession beyond the time permitted, the petitioner is liable to be considered only as an unauthorised occupant, is liable to be charged double the rent, and could be proceeded against for eviction and could further be proceeded for disobedience of Government orders.

The submission as made in the alternative that until disposal of the representation (Annex.9), the petitioner may be

permitted to retain the house does not appear justified for the fact situation of the present case. The representation as made by the petitioner on 12.11.2007 only after he was threatened with forcible dispossession does not inspire confidence fundamentally for the reasons that in the first representation made on 20.08.2007, the petitioner asked for retaining the accommodation in question only on the ground that his house construction work is going on at Jodhpur; and in the second communication dated 28.09.2007, the petitioner would only inform the authorities of the matter of sanction being pending with the Government and that he would produce the sanction order as soon as received. For the fact situation noticed hereinbefore, this Court is clearly of opinion that the petitioner ought to have acted fair with his employer who had already extended him all sympathetic considerations and permitted him to retain the quarter till 31.10.2007 and every single day spent thereafter is that of unauthorised occupation and the same cannot be allowed to be perpetuated in the name of repeated representation.

In the overall circumstances, this Court does not find any reason to exercise writ jurisdiction for the petitioner.

The writ petition fails and is, therefore, rejected.

Mohan/ **(DINESH MAHESHWARI), J.**